IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 923/2006
(Heera Lal Vs. State of Rajasthan & Anr.)

Date of Order : 16/10/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. P.C.Verma for the petitioner.
Mr. Ashok Upadhyay, public prosecutor.
Mr. Ramsukh Sharma for the non-petitioner No.2.

BY THE COURT:-

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 19.7.2006 passed by Additional Sessions Judge No.3, Jodhpur (for short 'the revisional court' hereinafter), whereby the revision petition filed by the non-petitioner No.2 against the order dated 8.11.2005 passed by Judicial Magistrate No.7, Jodhpur (for short 'the trial court' hereinafter) was allowed and the petitioner was directed to produce the original agreement dated 25.10.1980 within fifteen days before the trial court.

I have heard learned counsel for the petitioner and

public prosecutor for the State as also counsel appearing for the non-petitioner No.2.

It is contended by learned counsel for the petitioner that the revisional court fell in error in directing the petitioner to produce the alleged original agreement dated 25.10.1980 which is incriminatory in nature and therefore, accused petitioner cannot be compelled to produce the same as the same can ultimately be used against him. Learned counsel further submits that the petitioner being an accused in the case is protected by Article 20 (3) of the Constitution of India. Learned counsel has relied on a decision of Hon'ble Supreme Court in State of Gujarat Vs. Shyamlal Mohanlal Choksi 1965 (2) Cri.L.J.256 wherein Hon'ble Apex Court held that one of the fundamental cannons of the British system of Criminal Jurisprudence and the American Jurisprudence has been that the accused should not be compelled to incriminate himself. The Indian Legislature was aware of the above fundamental canon of criminal jurisprudence because in various sections of the Criminal Procedure Code it gives effect to it. It was further held that in view of this background the Legislature, if it were minded to make S.94 applicable to an accused person, would have said so in specific words. It is true that the words of S.94 are wide enough to include an accused person but it is well recognised that in some

cases a limitation may be put on the construction of the wide terms of a statute. Again it is a rule as to the limitation of the meaning of general words used in a statute that they are to be, if possible, construed as not to alter the common law. Article 20 (3) has been construed by this Court in Kalu Oghad's case, AIR 1961 SC 1808, to mean that an accused person cannot be compelled to disclose documents which are incriminatory and based on his knowledge. S.94 Criminal Procedure Code, permits the production of all documents including the above mentioned class of documents. If S.94 is construed to include an accused person, some unfortunate consequences would follow.

In V.S.Kuttan Pillai Vs. Ramakrishnan and another, 1980 Cri. L.J. 196 (SC) Hon'ble Supreme Court held that whatever that may be, it is indisputable that according to the majority opinion the expression 'person' in Section 91 (1) (new Code) does not take within its sweep a person accused of an offence which would mean that a summons issued to an accused person to produce a thing or document considered necessary or desirable for the purpose of an investigation, inquiry or trial would imply compulsion and the document or thing so produced would be compelled testimony and would be violative of the constitutional immunity against self-incrimination.

Keeping in view the decisions of Hon'ble Supreme Court, in my view, the revisional court fell in error in directing the petitioner to produce the alleged original agreement dated 25.10.1980. In the circumstances, therefore, the order passed by the revisional court cannot be sustained and is liable to be set aside.

Consequently, the petition is allowed. The order dated 19.7.2006 passed by the revisional court is set aside. Interim stay order dated 28.7.2006 stands vacated.

(H.R.PANWAR),J.

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